

TESTIMONY OF JUDGE JAMES P. GRAY
LITTLE HOOVER COMMISSION
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In my view, the issue you are undertaking to address, to wit: our great country's drug policy and its ramifications, particularly in the area of alcohol and drug treatment, is the most critical issue facing our country today. From my experience as a former federal prosecutor, a criminal defense attorney in U.S. Navy JAG, and a trial judge in Orange County since 1983, I believe that not only has our drug policy failed, it literally is hopeless.

By our actions over the last several decades, we have proved to any reasonable person's satisfaction that we cannot incarcerate our way out of this problem. The United States of America leads the world in the incarceration of its people, both in sheer numbers as well as per capita. That even includes the incarceration rate in The Union of South Africa at the height of apartheid. In fact, the United States has the most severe approach to drug use and abuse of any Western country, and it also has a bigger drug problem than any of these countries. I believe there is a distinct cause and effect relationship between those two facts.

In June of 1994, the RAND Corporation released a study saying that our taxpayers receive seven times more value for their tax dollars in drug treatment in our country than in incarceration. Nevertheless, we continue to churn low level, mostly non-violent drug offenders through our Criminal Justice System, which serves to ruin the lives of many people and their families, and waste billions of tax dollars. In effect, this serves to remove from the marketplace the sellers of illicit drugs who are not particularly smart, well organized or violent, which leaves this unbelievably lucrative market for those people who are smarter, better organized and more violent. The remaining drug lords are making hundreds of millions, if not billions of dollars every year. But no matter what we do, we cannot repeal the law of supply and demand: As long as there is a demand in our country for illicit drugs, the demand will be met. Otherwise stated, there is no way in a free society that we can effectively prohibit the sale of small amounts of drugs for large amounts of money. And if we cannot keep these dangerous drugs out of our prisons, and we cannot, how can we reasonably expect to keep them off the streets of our towns and cities?

So instead, we must approach this critically important issue as managers, and not as moralists. In so doing, we must understand that these drugs, dangerous as they sometimes can be, are here to stay. There has never been a society for as long as mankind has walked the face of the earth that has not abused some form of mind-altering drug (except possibly the Eskimos, who could not grow anything; however, modern chemistry has now even changed that situation). Accordingly, we must take steps to reduce the harm that can and will occur because of the presence of these drugs in our communities.

Our present policy of Drug Prohibition has imposed dire and in many ways unnecessarily harmful consequences upon our society. These include rendering everyone who uses any form of illicit drug a

criminal, thus pushing them farther away from the medical professionals who can help them. It has also required users to consort with criminals in order to obtain their drugs, and often to commit property crimes in order to obtain inflated amounts of money to buy the drugs. Drug Prohibition has also resulted in a greater loss of our civil liberties than anything else in the history of our nation, and corrupted police, border guards and unimagined numbers of people here and all around the world. It has directly corrupted the government, police and people of Colombia, and generally made life in that country ungovernable and unlivable. And further, it has financed terrorists like Osama bin Laden in their deadly and cowardly deeds.

What is an effective program to reduce the harm that can and will be caused by the presence of these often dangerous drugs in our communities? In my view, there are four things that work: 1) Truthful and honest education. It is working today with regard to a material reduction in the use of tobacco, and will work with regard to these other dangerous drugs as well. 2) Prevention and Treatment. These work well with our automobiles, airplanes and our bodies, and they have also been shown to be effective with regard to the harms of drug usage. 3) Remove incentives to engage in socially unacceptable conduct. Today there are huge incentives to sell illicit drugs because of the obscene profits to be realized from that activity. And 4) Hold people accountable for their actions. It makes as much sense to put the gifted actor Robert Downey, Jr., in jail for his cocaine addiction as it would have Betty Ford in jail for her alcohol addiction. However, if either of them drive a motor vehicle under the influence of any of these drugs, that should remain a crime for which they are accountable. The same is true with regard to assaults, burglaries, check offenses, and other traditional crimes. It is clear that the problem drug users will find their way into the Criminal Justice System whether or not their drug of choice is illegal. The needs of non-problem users can best be addressed by drug education and treatment.

Any alternative strategies to de-profitize these drugs and divert monies from the incarceration to the treatment of non-violent drug offenders are to be desired. The recidivism rate at our State's prisons is horrendously and unacceptably high. Drug treatment, as described beginning at page 181 of my book, works. Experience, observation and the RAND Corporation study confirm it.

Unfortunately, we are fighting against decades of rhetoric that equate these often dangerous drugs with prison. This has led us into the creation of an enormous prison-industrial complex, and numbers of politicians who get elected and re-elected by talking tough on crime. What we need instead is to talk and be smart on crime. One year after we finally repealed Alcohol Prohibition, crime went down sharply in our country. For example, the murder rate was reduced by more than 30 percent after one year, and continued to be reduced every year thereafter until the beginning of the Second World War. And this does not even begin to address things like the decrease of death and injury from such things as the impurities in bathtub gin, and the loss of respect for the rule of law itself caused by trying to enforce the unenforceable.

All we need to begin to see the same results is to let people know that it is all right to discuss the critical issue of drug policy. And that just because we discuss this issue does not mean that we condone drug use or abuse. Your Commission is to be congratulated for assisting in this critical discussion.